72-1532

FILE COPY

FILED
MAY 14 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1532

STANLEY W. PETERSON,

Petitioner,

vs.

BRUNO W. STANCZAK, JACK HOOGASIAN, ROBERT BABCOX, MILBURN HEARY KRAPF, DAVID H. BIDDLE, DONALD NYSTROM, DONALD HOUTE and CHARLES E. LARSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FREDERICK F. COHN
PATRICK A. TUITE
134 N. LaSalle St.
Room 2004
Chicago, Ill. 60602

MIDWEST LAW PRINTING CO., CHICAGO 60601. FINANCIAL 6-3988

TABLE OF CONTENTS

	PAGE
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
I. Evidence seized in violation of the Fourth Amendment cannot be introduced by defendants to demonstrate their good faith in defense of a civil rights action brought pursuant to Title 42, U.S.C. Secs. 1983 and 1985	6
II. A confession obtained by physical coercion, in violation of petitioner's constitutional rights, cannot be used as evidence of defendants' good faith in defense of a civil rights action brought pursuant to Title 42, U.S.C. Secs. 1983 and 1985	8
III. The reputation of a witness in his "work community" for veracity is as sound a basis for testimony as is his reputation in the community where he lives; dicta to the contrary in Michelson v. United States, must either be clarified or overturned	11
CONCLUSION	14

APPENDICES:

A—Opinion Of The U.S. Court Of Appeals 1a

B—Constitutional Provisions And Statutes Involved 7a

List Of Authorities Cited

Cases

Henry v. United States, 361 U.S. 98, 4 L.Ed.2d 134 .. 7

Jackson v. Denno, 378 U.S. 368, 1 L.Ed.2d 1205 9

Kerr v. Mohan, ... F.2d ..... (7 Cir. 1972), No. 71-1551 8

Mapp v. Ohio, 367 U.S. 643, 6 L. Ed.2d 1081 6

Michelson v. United States, 335 U.S. 469 12

Monroe v. Pape, 365 U.S. 167, 5 L. Ed.2d 492 6

One Plymouth Sedan v. Penn., 380 U.S. 693, 14 L.Ed. 2d 170 8

People v. Cobb, 45 Cal.2d 158, 287 P.2d 752 (1955) (en banc) 12

People v. Kronk, 326 Mich. 744, 40 N.W.2d 788 (1950) 12

State v. Axelrod, 248 Minn. 204, 79 N.W.2d 667 (1956) 12

State v. Jackson, 373 S.W.2d 4 (Sup.Ct.Mo. 1963) 12

United States v. Parker, 447 F.2d 826 (7th Cir. 1971) 12

United States v. Salazar, 425 F.2d 1284 (9th Cir. 1970) 12

Whitely v. Warden, 401 U.S. 560, 28 L.Ed.2d 306 7

Whiting v. United States, 296 F.2d 512 (1st Cir. 1961) 12

Constitutional Provisions, Statutes and Text

United States Constitution—
Amendment 4 ..... 6, 7
Amendment 5 11
Amendment 14 ..... 6, 11

Title 42, U.S. Code—
§ 1983 ..... 6, 7, 8, 10
§ 1985 ..... 6, 7, 8, 10

Joseph Heller, Catch-22, Dell Publishing Co. (1971), p. 47 ..... 10, 11

V Wigmore on Evidence, (3rd ed.) §1616 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No.

STANLEY W. PETERSON,

Petitioner,

vs.

BRUNO W. STANCZAK, JACK HOOGASIAN, ROBERT BABCOX, MILBURN HEARY KRAPF, DAVID H. BIDDLE, DONALD NYSTROM, DONALD HOUTE and CHARLES E. LARSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Stanley W. Peterson, prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW.

The opinion of the Court of Appeals, not yet reported, is reprinted as App. A, *infra.*

JURISDICTION.

The judgment of the Court of Appeals was entered on February 12, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED.

1.

In a Civil Rights action brought pursuant to Title 42 U.S. Code, Secs. 1983 & 1985, may evidence seized by defendants in violation of plaintiff's Fourth Amendment rights be introduced by defendants to demonstrate their good faith?

2.

In a Civil Rights action brought pursuant to Title 42 U.S. Code, Secs. 1983 & 1985, may a confession obtained by defendants from plaintiff by physical coercion in violation of his constitutional rights be introduced as evidence of defendants' good faith?

3.

May reputation evidence of a Civil Rights suit defendant, an Assistant State's Attorney, as to his bad reputation for truth and veracity, be excluded merely because the witness' knowledge is of the defendant's reputation in his professional community rather than in his place of residence?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Pertinent portions of U.S. Const., Amends. 4, 5 & 14, and of 42 U.S.C. §§ 1983 and 1985, are set forth in App. B, *infra*.

STATEMENT OF THE CASE.

Petitioner Stanley Peterson was indicted on or about May 7, 1963 in the Circuit Court of Lake County, Illinois, charging him with five counts of "Murder by Abortion." Petitioner alleged, in his complaint for civil rights violation, that after various discussions between his counsel and the Assistant State's Attorney assigned to handle the case, an agreement was reached whereby petitioner would plead guilty to involuntary manslaughter and the prosecution would recommend probation. Petitioner did plead guilty to involuntary manslaughter, but was sentenced to serve a term of nine to ten years.

Subsequently, petitioner filed a writ of habeas corpus, alleging, *inter alia,* that the indictment against him was void because at the time of the indictment the crime of "Murder by Abortion" had been repealed. The Circuit Court of Will County, Illinois, granted petitioner's motion, holding that the crime set forth in the indictment did not

exist, and thus the indictment was void, and that therefore his plea to involuntary manslaughter was similarly void. This order was not appealed, and petitioner was released from custody after serving thirty-two months in the Illinois State Penitentiary.

Petitioner alleged in his complaint for civil rights violation that after he had been arrested for this alleged offense, he was held incommunicado; was threatened with physical harm by a police officer, an Assistant State's Attorney and the coroner; was not allowed to contact an attorney or his family; and was not allowed food or washroom facilities. He also alleged that he was not informed of the charges against him, and that defendants coerced a confession from him by threats and physical torture.

During the opening statement for defendants, it was stated that defendants would prove that petitioner had committed a crime, namely, an abortion. (Tr. 17-19) This was objected to by counsel for petitioner. (Tr. 17) During the extended colloquy between court and counsel regarding the propriety of this matter, the court stated that petitioner was required to prove not only that his rights were violated, but also that the defendants did so with the specific intention to violate his civil rights, and that they acted willfully. (Tr. 21-22) He stated that petitioner was required to prove that the defendants acted in a deliberate conspiracy to interfere with petitioner's civil rights. (Tr. 23)

After further argument the court stated that defendants were entitled to present the defense that they had acted with good faith and in a way that seemed reasonable for them under the circumstances. While stating that the guilt or innocence of the petitioner was not an issue in the cause, the court ruled that the circumstances known to the officers

and to the other public officials and upon which they relied are a test of their own reasonableness and good faith. (Tr. 74-75) He ruled that the defendants were entitled to assert that they made a mistake in good faith and that their conduct was reasonable under the circumstances. (Tr. 75) The district court therefore held that items seized from petitioner could be introduced even if the seizure was in violation of the Fourth Amendment. The district court similarly permitted the contents of the petitioner's confession, alleged to have been obtained by coercion, to be presented to the jury.

The district court excluded testimony that defendant Hoogasian's reputation for veracity in his work community was bad. (Tr. 840)

After the close of petitioner's case, directed verdicts were entered in favor of defendants Stanczak, Krapf, Biddle, Houte and Larson. The jury returned a verdict in favor of the remaining defendants after a full trial.

The Court of Appeals affirmed.

REASONS FOR GRANTING THE WRIT.

I.

Evidence seized in violation of the Fourth Amendm cannot be introduced by defendants to demonstrate th good faith in defense of a civil rights action brought p suant to Title 42, U.S.C. Secs. 1983 and 1985.

The District Court, as did the Court of Appeals, h that police officers and prosecutors can introduce evide which was seized in violation of the Fourth and Fourtee Amendments of the U.S. Constitution in defense of a l suit filed pursuant to Title 42, Secs. 1983 and 1985. T decision of the Court of Appeals is one of first impressi upon the vital issue of defense use of illegally seized e dence in a suit to collect damages as a result of violati of the plaintiff's constitutional rights.

This holding is in conflict with the purpose of the e clusionary rule (*Mapp* v. *Ohio*, 367 U.S. 643, 6 L. Ed. 1081) and Title 42, Secs. 1983 and 1985. In *Monroe* v. *Pa* 365 U.S. 167, 5 L. Ed.2d 492, the Court held the purpo of 1983 and 1985 is to prevent state "governmental" v lations of citizens' rights protected by the United Stat Constitution, by creating a remedy for the citizen who rights have been violated. In *Mapp*, this Court stated, reaching its conclusion that the exclusionary rule is app cable to the States: "[T]he purpose of the exclusiona rule is to deter—to compel respect for the constitution guaranty in the only effectively available way—by r moving the incentive to disregard it." 6 L.Ed.2d at 1090.

The purposes of both the Fourth Amendment and Secs. 1983 and 1985 are violated by permitting the governmental officials responsible for violating petitioner's constitutional rights to use in their defense evidence obtained in violation of the Constitution. A governmental agent should not be able to justify a violation of a person's constitutional rights based on evidence obtained in a previous and/or concurrent violation of that person's constitutional rights. Such a rule is inconsistent with this Court's holdings that evidence found during an illegal search cannot be used to justify the search, *Henry* v. *United States*, 361 U.S. 98, 4 L.Ed.2d 134, and that the "good faith" of the arresting officer basing his decision to arrest on instructions of other officers or on his belief that a warrant exists is irrelevant where no probable cause for the warrant in fact exists. *Whitely* v. *Warden*, 401 U.S. 560, 28 L.Ed.2d 306. The essence of these holdings is that governmental violations of a citizen's constitutional rights cannot be justified, where the government is relying, for justification, upon evidence obtained only as a result of prior illegal action.

There is no basis in law or logic for not applying the exclusionary rule to evidence illegally seized in violation of the Fourth Amendment of the Constitution merely because the instant suit is a civil action as distinguished from a criminal prosecution. Here the parties are the same as those involved in a criminal trial, *i.e.*, representatives of the State v. defendant, although their nominal roles are reversed. This similarity of parties, plus the fact that lawsuits pursuant to Title 42, Secs. 1983 and 1985 are limited to claims against "state governmental officials" who allegedly violated a person's federal constitutional rights while acting "under color of" governmental authority,

causes such suits to be so interrelated with criminal prosecutions [here in fact being an outgrowth of a criminal prosecution] that the exclusionary rule must be deemed applicable. See *One Plymouth Sedan* v. *Penn.*, 380 U.S. 693, 14 L.Ed.2d 170.

This Court should grant this writ of certiorari to determine the very important issue of whether the exclusionary rule prevents governmental officers from introducing in their defense, in a civil rights action, evidence they obtained by unconstitutional search and seizure.

II.

A confession obtained by physical coercion, in violation of petitioner's constitutional rights, cannot be used as evidence of defendants' good faith in defense of a civil rights action brought pursuant to Title 42, U.S.C. Secs. 1983 and 1985.

The issue involved in this petition is whether a prosecutor and police officers who elicited a confession by physical coercion so that it was involuntary, as distinct from being obtained in violation of *Miranda* v. *Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, can use said confession to prove "good faith" in their defense to a suit brought pursuant to Title 42, Secs. 1983 and 1985. The Court of Appeals recognized that if petitioner had filed suit only pursuant to Title 42, Sec. 1983, such confession would be inadmissible. (App. A, p. 4a, opinion) See *Kerr* v. *Mohan*, ... F.2d .... (7 Cir. 1972), No. 71-1551. However, the court held that such confession, which is normally inadmissible, may be admitted in support of the defense of good faith, where the citizen proceeds pursuant to Title 42, Sec. 1985 in addition to Sec. 1983. The court stated:

"[U]nlike the situation in *Kerr, supra,* here we have not only a claim of physical abuse and a coerced confession but also claims that several of the defendants took actions after the confession to impede or obstruct the due course of justice and that the defendants conspired deliberately to deny plaintiff the equal protection of the laws by, *inter alia,* securing his prosecution for the non-existent crime of murder by abortion.[3] As a defense against these claims, the oral confession was admissible to show that the defendants had good cause to proceed against the defendant in the manner they contended they did subsequent to the confession. By joining these claims, plaintiff took the risk that this kind of evidence would be admitted in support of said defense. It may be that the testimony about plaintiff's oral confession was prejudicial to plaintiff, but where it is clearly relevant to the issues of reasonableness and good faith essential to defend against charges of misconduct occurring after the confession and where, as here, the judge carefully instructs the jury about the limited purpose for which it may be considered and about the irrelevancy of plaintiff's guilt or innocence, it is not error to allow that testimony." (App. A, pp. 3a-4a)

"[3] As the district judge pointed out, just because the crime of 'murder by abortion' was non-existent did not mean that what plaintiff confessed to was not a crime. Moreover, it could be a valid defense if the defendants in good faith and with probable cause believed plaintiff guilty of a crime with which he should be charged. Defendant Hoogasian contended that the words 'by abortion' in the indictment were mere surplusage since the language of the indictment contained the necessary elements for the crime of murder."

While this position at first glance may appear rational, upon closer scrutiny its irrationality becomes apparent. According to *Jackson* v. *Denno,* 378 U.S. 368, 1 L.Ed.2d 1205,

a jury is deemed unable to exclude from its collective mind the contents of a confession in determining its voluntariness. How then, can the civil rights jury in the case at bar be expected to consider the contents of the confession only on the issue of good faith without prejudice to petitioner?

Moreover, a citizen who has been denied his constitutional rights is placed on the horns of a dilemma. The greater the proof he intends to introduce to demonstrate the unlawful activity of the State officers in obtaining and using the confession, the less his probability of obtaining relief; because if he proceeds pursuant to Sec. 1985, the confession forced from him by coercion and utilized against him in the prior unconstitutional prosecution, will be introduced into evidence, and will, as can be expected, prejudice the jury against him.

The position of the Court of Appeals is contrary to the very purpose of Title 42, Secs. 1983 and 1985, *i.e.*, to prevent unlawful violations of federal constitutional rights by supplying an *adequate* federal remedy to the citizens whose rights have been violated. The decision below emasculates such remedy and has the result of protecting the law enforcement officials with the very confession extracted by coercion, *i.e.*, the fruits of their acts in violating a person's constitutional rights. By permitting the officials to benefit from the use of the confession extracted in violation of the Constitution, the instant decision constitutes an incentive for the police engaged in violating a person's federally protected constitutional rights, to extract a confession. The decision has the same irrational quality as the rule of Catch-22:

> "There was only one catch and that was Catch-22, which specified that a concern for one's own safety in

the face of dangers that were real and immediate was the process of a rational mind. Orr was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. Orr would be crazy to fly more missions and sane if he didn't, but if he was sane he had to fly them. If he flew them he was crazy and didn't have to; but if he didn't want to he was sane and had to."

Joseph Heller, *Catch-22,* Dell Publishing Co. (1971), p. 47.

This Court should grant certiorari so that it may untangle the Gordian knot caused by the inter-relationship of the defense right to present a good faith defense and the policy that one should not profit from one's own illegal action—especially where such is coercion of a confession in violation of the Fifth and Fourteenth Amendments.

III.

The reputation of a witness in his "work community" for veracity is as sound a basis for testimony as is his reputation in the community where he lives; dicta to the contrary in Michelson v. United States, must either be clarified or overturned.

The trial court excluded reputation evidence concerning defendant Hoogasian, an Assistant State's Attorney, solely because the witness' knowledge was based upon Hoogasian's reputation in his "work community" rather than upon the witness' knowledge of the community in which Hoogasian lived. The dicta that a reputation witness will qualify "by showing such acquaintance with the defendant, the community in which he has lived and the circles in which he has moved, as to speak with authority of the terms in which

generally he is regarded," *Michelson* v. *United States*, 33
U.S. 469, 478, should not permit exclusion of material evi
dence concerning a defendant's reputation where such opin
ion is well founded upon the defendant's reputation in his
work community. *United States* v. *Parker*, 447 F.2d 826 (7th
Cir. 1971); *State* v. *Axelrod*, 248 Minn. 204, 79 N.W.2d 667
682 (1956). See also: V Wigmore on Evidence, (3rd ed.)
§1616; see, *e.g.*, *People* v. *Kronk*, 326 Mich. 744, 40 N.W.2
788 (1950); *State* v. *Jackson*, 373 S.W.2d 4, 8-9 (Sup.Ct
Mo. 1963); *People* v. *Cobb*, 45 Cal.2d 158, 287 P.2d 752, 75
(1955) (*en banc*); see also *United States* v. *Salazar*, 425 F
2d 1284-1286 (9th Cir. 1970); *Whiting* v. *United States*, 29
F.2d 512, 517 (1st Cir. 1961).

In today's society, especially in urban areas, persons may
not even know their next door neighbor, most interaction
being in the work setting. In *United States* v. *Parker*, *supra*
the court stated:

> "In today's complex urban society, a man's reputa
> tion among co-workers may well be more significant
> than his reputation among neighbors, particularly if
> they are apartment dwellers. • • •"

In the instant case, as recognized by the Court of Appeals
["even though we might have ruled differently"] (App. A
p. 6a) Officer Flood demonstrated on voir dire that he had
sufficient basis for testifying to the reputation of defendant
and defense witness Hoogasian. He testified:

> The Court: Have you discussed Mr. Hoogasian's
> reputation for truth and veracity with other persons
> in the community?
>
> The Witness: Yes, sir, I discussed them with the
> approximately, sixty some odd police officers of the
> City of Waukegan and approximately forty some odd

police officer of the Lake County Sheriff's Police Department.

The Court: Are you familiar with his reputation for truth and veracity outside of the area of the law enforcement personnel who are members of your association?

The Witness: I can answer that, possibly, that I was cognizant of statements made by certain individuals to the Illinois Bureau of Investigation relative to certain statements that were given by these individuals, that, as I understand it, were introduced before a Lake County Grand Jury at a future time.

The Court: Is it fair to say that your knowledge and opinion of Mr. Hoogasian's veracity and his reputation for veracity arise out of circumstances that either involve an investigation of certain things in Lake County or the negotiations or interviews that you had with Mr. Hoogasian and others in connection with your activities on the Cook County—what is it, the Cook County Sheriff's Association?

The Witness: Cook County Police Association.

The Court: Cook County Police Association.

The Witness: I would have to answer that, your Honor—I would have to say that it arises out of both.

The Court: One or the other or both?

The Witness: Correct, sir. (Tr. 840)

The reputation for truthfulness of a State's Attorney is amply be known by other law enforcement officials who deal with him in his work surrounding.

The issue here involved—the type of community in which a witness' reputation is known, requisite to lay a foundation for reputation testimony—is crucial to the decisions of all

litigation in this country, both civil and criminal, state and federal. This Court should grant certiorari to consider this issue.*

CONCLUSION.

Petitioner respectfully prays that the Writ of Certiorari be granted for the reasons stated herein.

Respectfully submitted,

FREDERICK F. COHN
PATRICK A. TUITE
35 E. Wacker Drive
Chicago, Illinois 60601
Attorneys for Petitioner

(*) The Court of Appeals' determination of harmless error is inappropriate, considering the extent of prejudicial evidence presented (see points I and II), and because the entire case may have turned on the credibility of defendant Hoogasian.

APPENDIX A

OPINION OF THE U.S. COURT OF APPEALS

In The
UNITED STATES COURT OF APPEALS
For The Seventh Circuit

Argued January 8, 1973
February 12, 1973

Before
Hon. THOMAS E. FAIRCHILD, *Circuit Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. JOHN PAUL STEVENS, *Circuit Judge*

STANLEY W. PETERSON,
Plaintiff-Appellant,

No. 71-1693 vs.

BRUNO W. STANCZAK, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division — No. 68C 1587.
Honorable FRANK J. MCGARR, *Judge.*

ORDER

This complaint was filed under Sections 1983 and 1985 of the Civil Rights Act (42 U.S.C. §§ 1983 and 1985) and sought $500,000 in damages from the State's Attorney and Assistant State's Attorney of Lake County, Illinois, the Coroner and Sheriff thereof, two police officers of Zion, Illinois, and two police officers of North Chicago, Illinois.

The complaint asserted that defendants, under color of state law, subjected plaintiff to a deprivation of his rights, privileges and immunities secured by the federal Constitution. Alternatively, the complaint charged that the defendants conspired to influence plaintiff's indictment[1] and to impede the due course of justice in Illinois, with intent to deprive plaintiff of equal protection of and equal privileges and immunities under the laws. Plaintiff alleged that as a result of defendants' wrongful acts, he was indicted on May 7, 1963, for the crime of "murder by abortion" of one Delores Katalanich and that the State's Attorney and his assistant promised him probation if he pled guilty of the lesser offense of involuntary manslaughter. Nevertheless, on January 21, 1964, after entering such a plea, he was sentenced to a minimum of 9 years and a maximum of 10 years in the Illinois State Penitentiary at Joliet, Illinois, where he was incarcerated until September 16, 1966. At that time he was released on a writ of habeas corpus on the ground that the crime of murder by abortion had been repealed in Illinois in 1961, so that involuntary manslaughter could not constitute a lesser included offense to which plaintiff could legally plead guilty. After hearing evidence for six days, the jury found in favor of the defendants.[2]

Since plaintiff does not attack the verdict of the jury as being against the manifest weight of the evidence, it is

---

[1] On defendants' motion, this particular allegation was stricken for want of proof at the close of plaintiff's case.

[2] After the plaintiff rested, the directed verdict motions of five defendants (Messrs. Krapf, Biddle, Houte, Stanczak and Larson) were granted, and the complaint was dismissed as to said defendants. Plaintiff is not appealing with respect to Krapf, Biddle and Houte. As to Stanczak and Larson, we agree that plaintiff had not shown enough to get to the jury.

unnecessary to recount the evidence adduced at the trial, except where necessary for an understanding of the asserted errors of the trial judge.

Plaintiff first charges that the district court improperly allowed defendants to introduce three categories of evidence: (1) testimony as to what information the defendants were given about plaintiff's activities in connection with the fatal April 1963 abortion performed on Delores Katalanich; (2) testimony relating plaintiff's April 28, 1963, oral confession that he had performed an abortion on Delores Katalanich (which procedure resulted in her death); and (3) testimony about abortion instruments and related articles seized from plaintiff's automobile on that date.

As to the first two intertwined categories, they were clearly relevant to the defense of good faith and probable cause permitted under the Civil Rights Act. *Pierson* v. *Ray*, 386 U.S. 547, 557. Testimony as to what defendants learned about plaintiff's involvement in the abortion and death of Delores Katalanich, even hearsay testimony, is admissible to show defendants acted reasonably and in good faith in arresting, confining, and interrogating plaintiff, all of which conduct was alleged in the complaint to be violative of plaintiff's constitutional rights. *Kerr* v. *Mohan*, ... F.2d ....., ..., Slip Op. at 4 (No. 71-1551, 7th Cir. 1972). With respect to the oral confession, unlike the situation in *Kerr*, *supra*, here we have not only a claim of physical abuse and a coerced confession but also claims that several of the defendants took actions after the confession to impede or obstruct the due course of justice and that the defendants conspired deliberately to deny plaintiff the equal protec-

tion of the laws by, *inter alia,* securing his prosecution for the non-existent crime of murder by abortion.[3] As a defense against these claims, the oral confession was admissible to show that the defendants had good cause to proceed against the defendant in the manner they contended they did subsequent to the confession. By joining these claims, plaintiff took the risk that this kind of evidence would be admitted in support of said defense. It may be that the testimony about plaintiff's oral confession was prejudicial to plaintiff, but where it is clearly relevant to the issues of reasonableness and good faith essential to defend against charges of misconduct occurring after the confession and where, as here, the judge carefully instructs the jury about the limited purpose for which it may be considered and about the irrelevancy of plaintiff's guilt or innocence, it is not error to allow that testimony.

As to the testimony concerning what was found in one of the bags seized by the police from plaintiff's open car trunk at the time of his arrest, we hold its admission not to be error. From our vantage point it is difficult to rule on the legality of the seizure of the bags, as the parties would have us do, because underlying factual questions would have to be resolved. However, the district court apparently took the position that whether seizure of the bags was valid or not, testimony about their contents was admissible and

---

[3] As the district judge pointed out, just because the crime of "murder by abortion" was non-existent did not mean that what plaintiff confessed to was not a crime. Moreover, it could be a valid defense if the defendants in good faith and with probable cause believed plaintiff guilty of a crime with which he should be charged. Defendant Hoogasian contended that the words "by abortion" in the indictment were mere surplusage since the language of the indictment contained the necessary elements for the crime of murder.

relevant to show what the individual defendants know as indicative of the state of mind or intent or thet good faith, if you will, with which they acted. Even if defendant Biddle was legally unjustified in grabbing the bags, so that their contents could not be used to convict the plaintiff, nor perhaps to show probable cause, it would be an overzealous extension of the exclusionary rule to deny the defendants the opportunity to use it to corroborate the other information in their possession so to show they acted in honest belief defendant had committed a crime. It should be noted that plaintiff did not appeal with respect to Biddle and does not contend any defendant against whom this appeal is pursued knew the bags were unlawfully seized, yet he claims the gist of their offense was malice.

Finally, plaintiff contends that he was improperly precluded from impeaching the testimony of one of his witnesses, defendant Hoogasian, through Sergeant Flood of the Cook County Police Department. An objection to reputation testimony was sustained by the trial judge because of his "doubt that his [Flood's] knowledge of the reputation of Mr. Hoogasian represents his general reputation in the community for truth and veracity."

A reputation witness will qualify "by showing such acquaintance with the defendant, the community in which he has lived and the circles in which he has moved, as to speak with authority of the terms in which generally he is regarded." *Michelson* v. *United States*, 335 U.S. 469, 478. Here the trial judge could conclude that the witness was not shown to be in a position to speak to the general community reputation of Mr. Hoogasian because on voir dire he testified that his knowledge and opinion of Mr. Hoogasian's reputation for veracity arose solely from "an inves-

tigation of certain things in Lake County or the negotiations or interviews that * * * [Flood] had with Mr. Hoogasian and others in connection with * * * [Flood's] activities on the Cook County Sheriff's * * * Police Association."

Since appellate courts are only to disturb rulings of trial courts on this subject "on clear showing of prejudicial abuse of discretion" (*id.* at 480), even though we might have ruled differently, we are unwilling to set aside the district court's conclusion that Sergeant Flood's opinion was his own and, although expressed in good faith, did not represent Hoogasian's general reputation in the community for truth and veracity.(*) In any event, the exclusion of the impeaching reputation testimony was harmless error because plaintiff had been so thoroughly discredited by other evidence.

Affirmed.

(*) In *United States* v. *Parker*, 447 F. 2d 826, 831 (7th Cir. 1971), we held that it was error to exclude the proffered evidence of Parker's reputation among other members of the Internal Revenue Service because Parker's character witnesses were qualified to testify to his reputation in the community in which he had been employed for many years. Flood's testimony did not show that he was so qualified. See Tr. 840.

APPENDIX B

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be * * * compelled in any criminal case to be a witness against himself.

Amendment XIV

Section 1. * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Title 42 U.S.C.

§1983. Every person who, under color of any statute, linance, regulation, custom, or usage of any State or rritory, subjects, or causes to be subjected, any citizen the United States or other person within the jurisdiction reof to the deprivation of any rights, privileges, or im- nities secured by the Constitution and laws, shall be ble to the party injured in an action at law, suit in equity, other proper proceeding for redress.

§1985. • • • (2) or if two or more persons conspire for purpose of impeding, hindering, obstructing, or de- ting, in any manner, the due course of justice in any ate or Territory, with intent to deny to any citizen the ual protection of the laws, or to injure him or his prop- y for lawfully enforcing, or attempting to enforce, the ht of any person, or class of persons, to the equal pro- tion of the laws;

• • •

(3) If two or more persons in any State or Territory spire or go in disguise on the highway or on the premises another, for the purpose of depriving, either directly indirectly, any person or class of persons of the equal otection of the laws, or of equal privileges and immunities der the laws; • • •